

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Notice of Proposed Rulemaking)	
)	CS Docket No. 02-52
Appropriate Regulatory Treatment for)	
Broadband Access to the Internet Over)	
Cable Facilities)	
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COMMENTS OF THE CITY OF SAN ANTONIO

These comments are filed by the City of San Antonio in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, the City of San Antonio believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in the City of San Antonio.

1. San Antonio and the Status of Cable Modem Service

The City of San Antonio has a population of 1,226,250 and has entered into three (3) cable franchise agreements with Time Warner Cable, Grande Communications and WIN First. Time Warner Cable and Grande Communications currently provide cable and cable modem service to city residents using public rights-of-way. In April 2002, based upon the FCC's March 15th Declaratory Ruling, both Time Warner Cable and Grande Communications ceased payment of the cable franchise fee on cable

modem services. The total number of cable subscribers in the City of San Antonio is approximately 333,000. The cable system serving our community offers subscribers over 200 digital cable channels.

2. San Antonio Franchises and Cable Modem Service

The City of San Antonio's franchise with Time Warner Cable, which was issued in 1978, does not expressly address cable modem service, however, the definition of gross revenues is broad enough to include revenues from cable modem service. Similar to other local franchising authorities' franchises, that franchise requires a percentage of gross revenue fee payments to the City of San Antonio. Consistent with the intent that the gross revenues were to have broad application, Time Warner Cable has historically paid the cable franchise fee on revenues derived from cable modem related services.

San Antonio's franchises with Grande Communications and WIN First were issued in 2000 and specifically allow each provider to utilize public rights-of-way to provide cable modem service. Section 2 of those franchises defines "Cable Service" to include "all Internet services." Further, those franchises define "Gross Annual Revenue" to include revenues from "all Internet services, including Internet access service." These provisions of the new "cable overbuilder" franchises were negotiated in good faith and with the understanding that Time Warner Cable paid cable franchise fees on revenues generated from its cable modem service since its franchise revenue provision could be broadly and reasonably interpreted to include such fees.

Notwithstanding the potential effect of the FCC's March 15, 2002 Declaratory Ruling and the result of this NPRM, the City of San Antonio has historically received franchise fees for the use its rights-of-way to provide cable modem/Internet services and has reasonably included the receipt of such fees in its budget forecasts. Based upon actual cable modem fees received by the City of San Antonio in the first quarter of the current fiscal year (Oct. 1st -Sept. 30th) the City anticipates an actual loss of approximately \$500,000 from April through September of 2002. Each cable provider stopped remitting cable modem revenue fee payments to the City in San Antonio in April 2002, citing and relying upon the FCC's March

15th Declaratory Ruling. It is important to recognize that it is reasonably expected that cable modem services and revenues generated from those services will grow rapidly. Further, the cable modem franchise fee payments were made in consideration of the grant of the franchise, i.e. the ability to use public infrastructure (rights-of-way). The City of San Antonio estimates that it will lose approximately \$9.5 million over the next 5 years if it cannot charge a fee for the use of public property to provide cable modem service.

3. City's Regulation of Cable Modem Service

In addition to regulating the use of its rights-of-way through its franchising authority and its police based powers, the City of San Antonio regularly receives complaints from customers regarding the services that are provided by cable operators. These include complaints about traditional video programming services and cable modem services. Over the last year the City has received at least eight complaints about cable modem service. Responding to these complaints requires significant staff time and effort.

There are many customer service problems associated solely with cable modem service. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects. Examples are as follows: cable modem service is marketed jointly, i.e. bundled, with cable service; complaints about promotional practices may apply to both services; a single bill may be sent for cable modem and cable services; customer service calls may go to a single number; and a customer may call a single location to schedule installation of cable service and cable modem service, so customer complaints about installations and missed appointments relate to both services. Further, problems with one service may negatively impact the quality of the other service. Typically, the cable provider advises customers that they can call the City of San Antonio with complaints and does not advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service.

4. City of San Antonio and Broadband Deployment

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. The City of San Antonio also believe that broadband has to be available to the entire community, as far as possible, to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

To that end, our community devotes significant resources to take advantage of the information highway and to extend its benefits to all. The funds that we obtain from cable modem franchise fees can help support these and other activities. If we lose those funds, it will be more difficult to protect consumers, protect public infrastructure and promote broadband deployment in this community.

Respectfully submitted,

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cc: Ben Gorzell, Supervisor of Public Utilities
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